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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,606	09/21/2001	Barry L. Rauwirth	2267.398US03	6639

7590 08/29/2003

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 08/29/2003

QO

Please find below and/or attached an Office communication concerning this application or proceeding.

N/K

Office Action Summary	Application N .	Applicant(s)
	09/960,606	RAUWORTH ET AL.
	Examiner	Art Unit
	Stephen J. Castellano	3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on _____.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

4) Claim(s) 1-15 is/are pending in the application.

4a) Of the above claim(s) ____ is/are withdrawn from consideration.

5) Claim(s) ____ is/are allowed.

6) Claim(s) 1-15 is/are rejected.

7) Claim(s) ____ is/are objected to.

8) Claim(s) ____ are subject to restriction and/or election requirement.

Disposition of Claims

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on ____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 	6) <input type="checkbox"/> Other: _____

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 recites the limitation "the drum insert" in lines 14 and 15. There is insufficient antecedent basis for this limitation in the claim.

Claim 11 is indefinite because it can't be determined if the scope of the claim includes the drum insert and closure as lines 5 and 6 on page 5 positively recite the structure of the chime extending above the closure when the closure is secured on the drum insert and the drum insert is received on the first fitting but lines 3 and 4 of page 5 state non-positively that the first fitting is adapted to receive a drum insert with a closure secureable on the drum insert.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 6, 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKenzie in view of Przytulla ('049).

McKenzie discloses a plastic molded drum having a bung opening, the drum comprising a side wall, top structure and bottom structure, all integrally molded; the top structure comprising a chime (sleeve 12) having a top edge extending circumferentially around and radially outward with respect to the top wall, the chime is integrally molded in a separate operation than the top

wall and side wall, there are no welded portions connecting the chime with the top wall or the side wall, and there are no welded portions connecting the top wall and the side wall, wherein the distance from the top of the first fitting to the top edge of the chime is sufficient such that components extending 1 $\frac{1}{4}$ inches above the top of the first fitting is (are) below the top edge of the chime (see total height of 20 inches and volume of 55 liters in column 5, lines 45-46). A container of this height with the height of the chime as drawn in relation to the height of the top of the first fitting appears to be at least 1 $\frac{1}{4}$ inches higher.

McKenzie discloses the invention except for the cylindrical side wall. Przytulla teaches a cylindrical side wall. It would have been obvious to modify the shape of the side wall to be cylindrical as a matter of design choice in sacrificing the packing efficiency of rectangular in cross section side walls for cylindrical side walls which have less corner surfaces on their interior allowing faster and easier cleaning.

In the event that the rejection is not sustained due to a lack of disclosure of a 1 1/4 inch height difference between the top edge of the chime and the top of the first fitting, it would have to modify this height by engineering design choice as an increase in chime height creates greater overlap with the bottom of a drum stacked directly thereabove as motivated by an increase in the stability of the stack.

Re claim 3, Przytulla teaches a bottom chime. It would have been obvious to add a bottom chime to prevent damage to the bottom structure and to avoid ruptures and spills due to this damage.

Note that: The admitted prior art in this application includes Fig. 1, 3-6 and any portions of the written specification which refer to these figures.

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Claims 4, 5, 8, 9 and 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKenzie in view of Przytulla as applied to claims 1 and 6 above, and further in view of the admitted prior art within this application (the admitted prior art).

For claims 4, 5, 9 and 14, McKenzie discloses a closure 29. The combination discloses the invention except for the closure having a vent outlet and a vent valve and a cover extending over the vent outlet and valve. Admitted prior art as shown in Fig. 5 teaches a venting closure 100 having a vent outlet 106 and a vent valve 104 and a cover 108. It would have been obvious to replace the closure of McKenzie with the closure 100 and cover 108 as motivated by the need for a closure with pressure relieving capability so that damage or an explosion doesn't occur due to excessive pressure.

For claims 8 and 11-15, McKenzie discloses a closure 29 but lacks a showing of a drum insert and closure. The combination discloses the invention except for the drum insert and a closure attached to the drum insert. Admitted prior art as shown in Fig. 1, 3 and 4 teach a drum insert 54 having components 56, 78, 85, 86, 87, 89 and 98 and a related closure 60 having components 88, 90, 92 and 94. It would have been obvious to replace the closure of McKenzie with the drum insert and closure as motivated by the need to attach a multiple port bung connector allowing the contents of the drum to be suctioned or siphoned from the interior through tube 56 in an upright configuration without having to insert a tube or add another fitting with a tube and then detach the tube or fitting upon completion of the discharge process as motivated by the time savings accomplished therein.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed.

Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-15 are rejected under the judicially created doctrine of double patenting over claims 1-18 of U. S. Patent No. 6,045,000 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: A plastic molded drum having a bung opening, the plastic molded drum comprising a cylindrical wall, a top structure, and a bottom structure, all integrally molded.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the

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organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc
August 27, 2003